ADDENDUM 1
Volume 13

W2003-00669-CCA-R3-PD

IN THE CRIMINAL COURT FOR MADISON COUNTY

TENNESSEE, AT JACKSON, DIVISION I

JON DOUGLAS HALL,

PETITIONER,

VS. CASE NO. 96-589

STATE OF TENNESSEE,

RESPONDENT.

TRANSCRIPT OF POST CONVICTION RELIEF

HEARING ON SEPTEMBER 4, 2002

VOLUME ONE OF TWO VOLUMES

THE HONORABLE ROY MORGAN

PRESIDING JUDGE

JUDY LASTER, COURT REPORTER

158 JAYCEE DRIVE, BELLS, TN 38006

(731) 663-9757

ORIGINAL

Vol. 13

A P P E A R A N C E S

FOR THE PETITIONER:

MR. DANNY ELLIS

ATTORNEY AT LAW

213 E. LAFAYETTE

JACKSON, TN 38301

MR. PAUL N. BUCHANAN

ATTORNEY AT LAW

1526 CROCKETT HILLS BLVD.

BRENTWOOD, TN 37027

FOR THE RESPONDENT:

MR. AL EARLS

ASSISTANT DISTRICT ATTORNEY

LOWELL THOMAS STATE OFFICE BLDG.

JACKSON, TN 38301

TABLE OF CONTENTS

VOLUME I

TABLE OF CONTENTS

VOLUME II

LIST OF EXHIBITS

IN THE CRIMINAL COURT OF MADISON COUNTY, TENNESSEE, AT JACKSON, DIVISION I

JON DOUGLAS HALL

VS. CASE NO. 96-589

STATE OF TENNESSEE

This Post Conviction Relief Hearing came on to be heard on the 4th day of September, 2002, before the Honorable Roy Morgan, Judge, in the Criminal Court for Madison County, at Jackson, Tennessee, Division I, and the following proceedings were had, to-wit:

MR. BUCHANAN: May I approach the Court Reporter to mark some exhibits?

THE COURT: Certainly.

(WHEREUPON, exhibits were marked by Court Reporter.)

THE COURT: Mr. Buchanan, I'm trying to refresh my recollection, too.

Was there a journal at one time you wanted to offer that the sister had kept -- marked as an offer of proof? I cannot remember and I don't know that you got it marked or in -- just as an offer of proof.

MR. BUCHANAN: I think she testified in summary fashion.

THE COURT: As long as you're satisfied. I wanted to give you that opportunity if you wanted to make it as an offer. Okay. Gentlemen, are we ready to call the next witness?

MR. ELLIS: Your Honor, before we begin, there is a matter of another exhibit we would like to introduce. I presented it to Mr. Al Earls and he has noted that he would like to object to it. Your Honor, what we have, if I may approach is a Deed of Trust and a Warranty Deed on the residence in question. We wanted to submit those as evidence to the Court and they are certified copies so they meet all the

hearsay exception rules. I believe Mr. Earls will object.

GENERAL EARLS: I don't see that that's relevant to any issue before the Court, Your Honor.

MR. ELLIS: Your Honor, it is very relevant. That information was available to the attorneys at the time. It would have fit very nicely into a trial strategy of manslaughter, provocation and the fact that she held all the family assets and held all the family -- held the family dwelling and could hold that over his head and use that as a means to incite passion.

THE COURT: If you want to make it a collective exhibit --

MR. ELLIS: Yes, Your Honor.

THE COURT: -- I'll let it be marked. I'll note the State's objection, but let me pass it to the Court Reporter and let it be marked and it'll be the next exhibit, gentlemen.

MR. BUCHANAN: That would be 15.

(Exhibit ~~15 duly~~ marked.)

MR. ELLIS: Your Honor, if we could have a minute. We were making copies for Mr. Al Earls on the reports of our experts. If I could just check to see if they've been done.

MR. BUCHANAN: Judge, due to the cooperation of Mr. Earls we've streamlined this hearing today, I think significantly. We want to at this time tender Exhibit 10, 11, 12 and 13 by agreement. They consist of affidavits of Joel, Beth Hall and Jon's mother as well as some relevant parts of the record of attorneys' files that were available to them at the time.

THE COURT: Noting there's no agreement, they'll be tendered then -- they will be marked by the Court Reporter as Exhibits 10, 11 and 12. Is that correct?

(Exhibit 10, 11 and 12 duly marked.)

MR. BUCHANAN: Yes, sir, and

that will dispense with the necessity for a deposition or anything so we are streamlining. Judge, you'll note in Exhibit Number --

THE COURT: Mr. Earls stepped out. I don't -- let's be cautious and let him get back in and I'll let you proceed.

(WHEREUPON, Mr. Earls returned to the courtroom.)

THE COURT: Which is an affidavit of the investigator.

MR. BUCHANAN: Yes, sir. That's selected excerpts. Mr. Earls has agreed to put those in, too, and rather than having Ms. Higuera testify, we've just got an affidavit of it telling what they are.

(Exhibit 13 duly marked.)

THE COURT: Mr. Buchanan, I believe you had a tape of some sort?

MR. BUCHANAN: Yes, sir. We'll play this later. It's very short. It's a crime scene video and actually we

don't need to play but about two or three minutes of it, but we'll do that later with the Court's permission.

THE COURT: Are you marking it Exhibit 14?

MR. BUCHANAN: It's part of that pack, but it doesn't fit well into it.

THE COURT: When you say part of the pack, does it need a separate exhibit number?

MR. BUCHANAN: I don't think so, Judge, because it's referred to in the affidavit.

THE COURT: Okay, that's fine. We'll leave it there and eventually, I'll just advise staff, we'll need the video machine in here. Correct?

MR. BUCHANAN: Yes, sir.

THE COURT: Okay, they can make arrangements for that then. Which number is it a part of now? Which affidavit?

MR. BUCHANAN: Exhibit 13.

THE COURT: The investigator's

affidavit. Okay.

MR. BUCHANAN: We're ready to proceed, Your Honor. We'll call Pam Auble.

THE COURT: Is the rule called for before we start again?

GENERAL EARLS: Yes, sir.

THE COURT: The rule's called for so any and all witnesses must remain outside the courtroom. You're reminded not to discuss your testimony with those going and coming from the courtroom. Dr. Auble will come forward. You'll be called in as you're needed to testify. The rule applies throughout the day to all witnesses.

(WHEREUPON, the witnesses left the courtroom.)

MR. BUCHANAN: Judge, could we have Dr. Caruso sit in on her testimony since he's an expert?

THE COURT: General, do you agree with that?

GENERAL EARLS: Yes, sir.

THE COURT: Okay, please call him back in.

GENERAL EARLS: Your Honor, at this time the State wants to offer an objection to this evidence. This issue was gone into on the trial, litigated on appeal and it's a previously determined issue and we're objecting on that basis.

THE COURT: Mr. Buchanan?

MR. BUCHANAN: It has been spoken to, Judge, but it's not previously determined in terms of ineffective assistance of counsel in terms of what could've been done had they properly sought the proper medical opinions.

THE COURT: I'm going to overrule the State's objections and let you proceed. Let the witness be sworn.

PETITIONER'S PROOF

DR. PAMELA AUBLE was called and having been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BUCHANAN:

Q. Would you state your name for the record, please, ma'am?

A. My name is Pamela Mary Auble.

Q. And what do you do for a living, Ms. Auble?

A. I'm a clinical neuropsychologist.

Q. And in that connection what are your qualifications to be a psychologist?

A. I received my Bachelor's Degree from Vanderbilt in 1977, my Master's Degree from the University of Toronto in 1978 and my Ph.D. in 1984 from Vanderbilt. As part of my training I did an internship in Boston in neuropsychology from 1983 to 1984. I've been licensed in Tennessee as a psychologist since 1985 and I've been Board Certified in clinical neuropsychology since 1994.

MR. BUCHANAN: I submit she's qualified, Your Honor.

THE COURT: Anything from the State?

GENERAL EARLS: No, sir.

THE COURT: She's declared to be an expert for those purposes. Go ahead.

Q. Dr. Auble, what exactly was the role you played in Jon Hall's case?

A. I did a neuropsychological evaluation at the request of you and Dr. Keith Caruso.

Q. Would you tell the Court what a neuropsychological evaluation is?

A. It's an evaluation to determine whether there are any deficits or problems in memory or thinking which might be due to brain injury and it also includes an evaluation of personality and emotional functioning.

Q. And in connection with this, what do you do to prepare yourself to give this -- these sorts of tests?

A. Generally, my evaluations stand on three legs. One is my interviews with Mr. Hall. The second is the

standardized testing that I do, and the third is a social history or a review of relevant legal, medical, psychological school records, you know, information about the defendant.

Q. How important is the social history to your process?

A. It's critical to it because it provides information about the patient that sometimes the person can't or won't or doesn't know, can't tell you, won't tell you, doesn't know. It flushes out the evaluation. It provides different perspectives. It provides documentation of abnormalities. You really have to have it to do an adequate evaluation.

Q. As the psychological professional that's hired in any case of this nature, who do you rely upon to supply you that information?

A. The attorneys usually in the case.

Q. And is that standard in terms of all the cases that you handle?

A. Yes. Sometimes I get information directly from the mitigation specialist, but, basically, it's the attorneys or the mitigation people that send it to me.

Q. And were you given such material in this case?

A. Yes. I was.

Q. Why is it important -- we've had testimony that -- I believe Dr. Zager had done a social history. Why is it important that you have something more than just you going out and interviewing the defendant?

A. Because the defendant sometimes doesn't know all the information that you need to come up with adequate conclusions. Sometimes the defendant isn't aware of what's important or what's not important. Sometimes additional evaluations need to be done -- different, you know, kinds of medical evaluations need to be done to provide you with additional information.

Q. Do sometimes the defendants, for lack of a better phrase, are less than candid with you?

A. Sometimes they are. Yes.

Q. So the social history allows you to verify some facts to some extent then.

A. It does, and it provides different perspectives on the defendant which, you know, by definition the defendant can't do himself.

Q. When you're talking about a social history, tell the Court what a minimum social history might be comprised of.

A. Interviews with families and friends, medical records, any psychiatric or psychological records, school records. There probably is other things that would be helpful as well, but I would say those would be the minimum.

Q. Hypothetically, if a defendant had several sisters and several

brothers, would you consider it necessary that those brothers and sisters be interviewed by somebody and that you be able to have access to what they had to say about his past?

A. Yes, very much so. It would provide information about the family. In Mr. Hall's case he's one of the youngest children, and so, his older siblings, you know, conceivably might know more about what was going on in the family when he was a young child than he would.

Q. Would you consider it an incomplete social history to not have the siblings interviewed?

A. Yes. I would.

Q. Did you -- you conducted standardized tests, did you not?

A. Yes.

Q. Would you tell the Court exactly what tests you administered on Mr. Hall?

A. I administered a number of tests of mental abilities and memory and

attention and other things that your brain does in terms of thinking and reasoning. Those included the Wechsler Adult Intelligence Scale, the Wechsler Memory Scale, the Test of Memory Malingering, the Halstead Reitan Battery, which is comprised of a number of tests. I administered six of them. The Delis Kaplan Executive Functioning System, the Boston Naming Test and the Grooved Pegboard Test. I also administered three tests of personality and emotional functioning. Those included the Rorschach, the MMPI and the Incomplete Sentences Blank.

Q. What does the Wechsler Adult Intelligence Scale tell you?

A. It's an IQ test.

Q. And the Wechsler Memory Scale?

A. It's a test of your ability to learn new information.

Q. And the Test of Memory Malingering?

A. It's a test that is given to

evaluate whether the defendant is putting forth an adequate effort on the test procedures. It's a test to see if they're faking problems.

Q. And the Halstead Reitan Battery and you said you administered six from it. What do they tell you?

A. There's six tests that I administered. The Halstead Reitan overall is a test of neuropsychological functioning of things that your brain does and that -- so the person can be compared with other people of their age and education to see if they're performing up to par on these things. The tests that I administered included the Booklet Category Test, which is a test of mental flexibility and executive functioning or reasoning; Trailmaking, which is a test of attention and also mental flexibility; the Seashore Rhythm Test, which is a test of attention and has something to do with right hemisphere functioning as well; the

Speech Perception Test, again, a test of attention and concentration and also language -- comprehension of non sentence syllables; the Finger Oscillation Test, which is a test of fine motor speed; the Tactual Performance Test, which is a test of spatial reasoning and also memory, and those were the tests I administered from the Halstead Reitan.

Q. All right. And then the Delis Kaplan Executive Functioning System, what does that tell us?

A. It's a relatively new set of tests that are designed to determine the adequacy of a person's frontal lobe functioning. In other words, what is their thinking and reasoning, their flexibility, their ability to adapt their behavior to new situations, their capacity to inhibit responses. The things that your frontal lobes do.

Q. And the Boston Naming Test. What value is that to us?

A. It's a test of language. It is a test designed to determine the person can come up with the correct names for pictures. If there's language dysfunction, naming is usually one of the things that is hit or affected first.

Q. And the Grooved Pegboard Test. What does that tell us?

A. It's another test of motor speed and it also measures motor dexterity.

Q. And the Rorschach test. That's the old inkblot test, is it not?

A. That's right. That's the famous inkblot test.

Q. What does that tell us?

A. It's a test of personality style and personality functioning. Obviously, it doesn't tell anything very specific about what an individual is doing at a certain time, like on October 15th, but it does tell general response styles, general personality style.

Q. And the Minnesota Multiphasic

Personality Inventory-II. What does that tell us?

A. It's a very long questionnaire which is designed to measure personality and emotional functioning.

Q. And the Incomplete Sentences Blank?

A. That's really more like a structured interview. It's the beginnings of sentences and the person finishes sentences however they want to.

Q. Can you tell the Court just in summary fashion what records you interviewed in terms of a social history and background on Jon Hall before embarking on this?

A. I reviewed various interviews, both of Mr. Hall and his family, friends, people he associated with by April Higuera, by Tammy Askew, by Glori Shettles. I reviewed a Mitigation Assessment done by Ann Charvat, a summary of the testimony of Lynn Zager and Joe Mount, records from Middle

Tennessee Mental Health Center, records from the Newborn Intensive Care Discharge Summary, a summary of audiotapes of the trial, the Tennessee Department of Employment Security Appeal Decision, the Tennessee Department of Correction progress notes, the report of Dr. Caruso, Inmate Grievance Forms, material prepared by Mr. Hall regarding ineffective assistance of counsel and a genealogy chart.

Q. Then did you also interview Mr. Hall himself?

A. I did.

Q. And on how many occasions and for roughly how long?

A. All together I have spent nine hours with Mr. Hall. Some of that was in interview and some of that was the administration of the tests. I don't have it broken down by what was what. It's on three different occasions.

Q. Tell the Court exactly in terms of a -- where does your -- the test that

you performed, where does that fit in to the overall scheme of determining the mental state of Mr. Hall in terms of -- how does your work supplement, for instance, Dr. Caruso's or Dr. Salomon's?

A. My work would supplement their work in that it would -- because of the testing that I -- some of my work overlaps theirs. Dr. Caruso also reviews records. He also interviews the defendant. In that way, I just, you know, am adding -- review of the records in some ways is redundant because presumably we would read and find the same things. In the interviews we may find slightly different things. We both cover the same ground. The difference between my evaluation is really in the standardized testing, in that I do both an evaluation of the person's mental capacities to see if there's evidence in this case of brain injury or frontal lobe damage that would cause lack of control that would cause impulsive

behavior. You know, that can be a cause of a person acting without thinking or losing control of their anger. I also do personality testing to document whether there is evidence of personality malfunctioning, depression and other problems of that nature. It's a way of documenting what's going on.

Q. In addition to your evaluations, the results of your tests and the opinions you form, do you forward those results on to Dr. Caruso?

A. Yes.

Q. And do you know what role that plays in his work?

A. It would -- I would think it would help him come to a final diagnostic formulation. In this particular case there was a question of low brain serotonin levels and/or possibly brain injury. Both of those can cause impulsive violence and my work was to see if there was evidence of brain injury that could be accounting

for this. So my work was being conducted at the same time as the evaluation of the brain's serotonin levels.

Q. So your tests can provide some meaningful information as regards to impulsivity control, and when we say impulsivity control are we talking about what's known as Intermittent Explosive Disorder?

A. Yes.

Q. And also low serotonin levels can also be an indicator of that?

A. That's right, and they don't overlap necessarily. A lot of times you get normal neuropsychological functioning with evidence of low brain serotonin and you can get vice versa as well. You can get impairments in neuropsychological functioning in normal brain serotonin levels or you can get both. They're independent factors, really.

Q. Are you familiar with Dr.

Salomon's results on his tests that he did on the serotonin levels?

A. I have not seen the report. I understand from Dr. Caruso's report that they were very low.

Q. And what does that indicate to a psychologist?

A. Well, that -- evidence of low brain serotonin can be a factor that puts a person at risk for Intermittent Explosive Disorder.

Q. Do you remember in terms of -- in your profession you like to state where someone is in a percentile in the population of people generally, as I understand it. Is that correct?

A. In my test results, yes.

Q. So, for instance, if someone has an IQ of "x" you can say that he's within a certain percentile of the general population.

A. That's right.

Q. Do you happen to know what percentile of the serotonin levels came

out on Jon?

A. No. I -- from Dr. Caruso's report his was reported as 70 and the normal range is much higher than that, but I don't know what the percentile is.

Q. Okay. Well, let's talk a little bit about your test results. Will you tell the Court exactly in summary fashion what your test results showed?

A. The results of the neuropsychological testing were essentially normal in most areas. There was no evidence of malingering or faking. The neuropsychological testing did indicate some difficulties with attention and response speed, something that I -- in my opinion was consistent with attention deficit disorder, most likely. The personality testing revealed a person who does have difficulty controlling his emotions in emotional situations. His responses are likely to be unmodulated. Mr. Hall has low self-esteem. There was evidence of

internal anger. He may have trouble understanding people and perceiving them in accurate ways. At the time I saw him he did not appear clinically depressed, though there was evidence of some tension from his current situation.

Q. If someone is, in fact, extremely low in their serotonin levels is that an objective test that people in the profession can use to make determinations?

A. Yes, and it has been used in Tennessee for a number of years.

Q. It's been used at least since 1995, has it not?

A. Yes. I've worked on cases that -- where that was used that were, I think, before that or at least right around that time, and that was -- that was being used then.

Q. Is there any way that test can be faked and by that, I mean, is there any way that a person can control their serotonin levels so that they can have

the test come out a certain way?

A. No.

Q. If, in fact, you have someone that you suspicion or you're trying to rule out Intermittent Explosive Disorder and you get a low serotonin reading, is that consistent with Intermittent Explosive Disorder?

A. Yes, it would be.

MR. BUCHANAN: Pass the witness, Your Honor.

CROSS EXAMINATION

BY GENERAL EARLS:

Q. Dr. Auble, are you a member of or associated with any organizations or associations whose primary function is to assist criminal defense lawyers, such as, the Tennessee Association of Criminal Defense Lawyers?

A. Yes.

Q. And what are those?

A. That I'm an associate member of the Tennessee Association of Criminal Defense Lawyers.

Q. And do you lecture for that organization?
A. I have. Not recently, but, yes.
Q. And part of the purpose of your lectures is to instruct them on how to win cases. Is that correct?
A. No. I don't know how to win cases. I instruct them on psychological and neuropsychological functioning.
Q. Do you ever give those lectures to prosecutors?
A. I would if I were invited to.
Q. Ms. Auble, have you ever manipulated data or information in any case that you've testified in an unprofessional manner?
A. I don't believe I have. No.
Q. Do you recall the case of Cribbs versus State in Shelby County?
A. Yes. I do.
Q. In that case did you not testify that the defendant had a low IQ?
A. He had an IQ of 75.
Q. Isn't it true that you testified

that you threw out the high scores on that IQ test?

A. No. I didn't do that. His IQ was 75. That was his full scale IQ. Okay. Let me tell you what I testified to. I testified that if you look at -- many people who have very low IQs do best on very simple tasks, and that was true of Mr. Cribbs. His best performance was on two tests -- two sub-tests -- there's 13 sub-tests comprising the IQ -- of digit symbol and digit span which are very simple, repetitive tasks where he only has to repeat back what he's told. If one had considered only the tests that involved thinking and reasoning, his IQ would've been a couple of points lower. It would've been 72, 73, something like that. That really wasn't the main point of my testimony, however. Mr. Cribbs had had a previous IQ that was obtained during, I think, the developmental period of 70. He had been tested a number of times with the

Wechsler Intelligence Scale and there is some practice effect on that. Over the years his IQ crept upward very slightly from 70 to 73 to 75. The main thrust of my testimony was that there's a practice effect and it was my opinion that his true IQ was, in fact, 70 or around that range, consistent with the first estimate of IQ obtained when, I think, he was 17.

Q. But to arrive at that point you disregarded the higher figure, didn't you?

A. No. No. The IQ of 70 was obtained by the -- an evaluation that was done when he was 17 and I didn't change that or alter it in any way.

Q. Did you disregard any scores on the test?

A. No.

Q. Discount them or anything like that?

A. Not at all. No.

Q. Do you recall the State's

witness testifying after you did that the manner that you arrived at those scores was very questionable if not unethical? Do you recall that?

A. I didn't see the State's witness testify. You know, he may have -- I mean, I said very clearly in my testimony that his IQ that was obtained in 1999 was an IQ of 75, and if you consider the sub-tests only that involve thinking and reasoning, that would've made his IQ somewhat lower, but I -- that was not the main point of my testimony. It was just a very small part of it. The main point was -- is that his IQ had been measured at 70 back in 1989 or something of that nature when he was under the age of 18.

Q. Isn't it true, Dr. Auble, that after the State's witness testified you retook the stand?

A. Yes.

Q. And that you testified after the State's witness that the procedures you

used in that case you would never use in your own personal practice?

A. Well, in my personal practice and in general, I give the full adult intelligence scale. The question in that case was very specific. I was asked what are his levels of thinking and reasoning, and -- so for that reason and I -- you know, I explained all this to the Court, actually, two or three times during the course of my testimony exactly what I did or why I did it. I certainly never said that one should always omit those sub-tests, but if the question is thinking and reasoning or in that case his functional intelligence, it could be thought of as that some of the sub-tests that involve only repetition do not involve functional intelligence.

Q. Your -- you talk about low serotonin levels. Is that correct?

A. Yes.

Q. They can be found in people with

Intermittent Explosive Disorder. Is that correct?

A. They can.

Q. But it's not necessarily there, is it?

A. No. It's not necessary there.

Q. And the fact that a person has low serotonin doesn't mean that they have Intermittent Explosive Disorder, does it?

A. It would certainly put them at much higher risks for Intermittent Explosive Disorder.

Q. How long does low serotonin last in the human body?

A. It's a fairly stable trait over time over their adult life. It's my understanding of it.

Q. Now, what are the diagnostic criteria for finding someone to have Intermittent Explosive Disorder?

A. I don't have my DSM4 here with me. I can give you a paraphrase of it or I --

Q. Let me ---the DSM4 that you referred to, *The Diagnostic and Statistical Manual of Mental Disorders*, is that a standard used in the profession of psychiatry and psychology?

A. Yes, it is.

Q. Now, you testified on direct that you found evidence of attention deficit disorder. Is that correct?

A. I did find that he had difficulties with attention and concentration.

Q. I believe your testimony was that's consistent with attention deficit disorder.

A. Yes, it is.

Q. If *The Diagnostic and Statistical Manual, Volume 4*, says that you first have to eliminate attention deficit disorder before you can diagnose someone with Intermittent Explosive Disorder, would you agree or disagree with that?

A. I guess I'd want to see it.

Q. Well --

(General Earls hands book to witness.)

A. I don't see it here where it says that.

GENERAL EARLS: May I approach, Your Honor?

THE COURT: Certainly.

A. Yeah. Maybe I'm not looking in the right place. Okay. This says -- okay. I see where you are. It says that the diagnosis of Intermittent Explosive Disorder is made only after other mental disorders that might account for episodes of aggressive behavior have been ruled out and it includes attention deficit disorder in there. My testing, of course, is not definitive about whether he actually does or doesn't have attention deficit disorder and it's really not my opinion that the attention deficit disorder, even if it exists, is accounting for his episodes of aggressive behavior.

Q. What did you do to eliminate attention deficit disorder?
A. I didn't do anything to eliminate attention deficit disorder. The results that I obtained showed that he has some difficulty on tasks that require quick responding.
Q. Dr. Auble, the truth is you didn't follow that diagnostic criteria of ADD, did you?
A. Well, it's my -- I did and it's my opinion that the attention deficit disorder, if it exists, is not accounting for the episodes of aggressive behavior.
Q. If it exists how does that eliminate it? You said you eliminated it. How did you do that?
A. I didn't -- I don't think I said I eliminated it.
Q. Okay, but you knew it was a potential.
A. I think it is a potential, yes.
Q. That's one thing that this book,

the manual, says you've got to eliminate.

A. It says that it can't account for the episodes of aggressive behavior.

Q. And you didn't do anything to eliminate it, did you?

A. I haven't eliminated it, no. I mean, it's -- he's got difficulties with his concentration and his quick responding. He does.

Q. Now, in your conclusion, you testified that at the time of the crime there was evidence of Intermittent Explosive Disorder, adjustment disorder, major depression, alcohol dependence, and cannabis abuse. Is that correct?

A. Yes.

Q. Isn't it also true that in the DSM4 that before you reach the conclusion that a person has Intermittent Explosive Disorder you've got to rule out the possible cause of that anger being the alcohol or drug abuse?

A. Yes. That's right, and from the social history there's evidence of loss of control, of anger and angry outbursts even when Mr. Hall is not intoxicated.

Q. On the date in question Mr. Hall was intoxicated, wasn't he?

A. Yes.

Q. And he was under the influence of alcohol and marijuana?

A. Yes.

Q. What did you do to eliminate substance abuse as a source of that anger?

A. Well, it's my opinion that the intoxication would have exacerbated the Intermittent Explosive Disorder. It did exacerbate it. It made it worse.

Q. In other words, you couldn't eliminate it.

A. I didn't try.

Q. You didn't follow the manual, did you?

A. No. The manual says that the episodes, the angry outbursts, cannot

only occur during intoxication and, in fact, in my -- and from the social history, they do not only occur during intoxication.

Q. Now, what other mental problems did Mr. Hall have according to your conclusion?

A. At the time of the crime?

Q. Yes, ma'am.

A. Intermittent Explosive Disorder. He had depression, either adjustment disorder or major depression, alcohol dependence and cannabis abuse.

Q. What did you do to eliminate the antisocial disorder?

A. I think he does have evidence of antisocial personality.

Q. My question to you is what did you do to eliminate that as a source of anger?

A. People with antisocial personality disorder do have aggressive episodes, but there -- it's differentiated from Intermittent

Explosive Disorder in this case because the -- in Intermittent Explosive Disorder there is a complete loss of control of anger which I felt was stronger than is usually seen in antisocial personality disorder. So I thought it was more severe than would simply be associated with antisocial personality.

Q. That's one of the things you've got to eliminate according to this book, isn't it? Antisocial disorder?

A. The angry outbursts cannot be due only to antisocial personality. That's right.

Q. And what steps did you take to eliminate antisocial personality disorder?

A. I don't eliminate it. I think he does have characteristics of antisocial personality disorder.

Q. But the DSM4 says it has to be eliminated.

A. Well, the episodes of anger

cannot be due to it. That's right.
Q. So we've got antisocial personality disorder that could have contributed to his anger. Is that correct?
A. It -- there is associated with antisocial personality disorder impulsivity. Yes.
Q. There is alcohol and drug abuse which contributed to his anger.
A. At the time of the crime, yes. Definitely.
Q. Depression? Did that contribute to it?
A. I don't see that as contributing to it, no.
Q. Okay.
A. I mean, it contributes -- he feels stressed. He feels unhappy which --
Q. And attention deficit disorder. Three things which you're required to eliminate that you did not eliminate.
A. No. I don't think major

depression is one of those things, and I didn't diagnose him with attention deficit disorder. I say that he may have had it because he does have some difficulty on timed tasks. I didn't give him a diagnosis of attention deficit disorder.

Q. Now, summing up your conclusion -- "It is my opinion that in this particular situation, his mental disease of Intermittent Explosive Disorder and adjustment disorder --." What did you do to eliminate that? Adjustment disorder.

A. It's either adjustment disorder or major depression, but, I mean, I don't know that I eliminated that. I'm saying that he has it.

Q. Okay. "...resulted in a rage reaction in which Mr. Hall was unable to premeditate this crime and in which his actions were not knowing in that he was unaware that his conduct was reasonably certain to cause his wife's death." How

is that testimony different or how is that statement different from what Dr. Zager testified to at the trial?

A. I don't have -- I have not read her testimony and I don't -- I've not had that. From the summary that I read, she did not diagnose him with Intermittent Explosive Disorder.

Q. That's correct. She said that he was acting as a result of an impulse brought on by his anger.

A. She testified toward diminished capacity. Yes.

Q. That's right, and basically that's what you're saying, isn't it?

A. Yes.

Q. Now, have you read -- you have not read the transcript of this trial, have you?

A. No.

Q. Isn't it true that according to the DSM4 that if a person is acting in a purposeful manner that you do not give the diagnosis of Intermittent Explosive

Disorder?

A. I'm not sure what you're saying.

Q. Aggressive behavior may, of course, occur when no mental disorder is present. Purposeful behavior is distinguished from Intermittent Explosive Disorder by the presence of motivation to gain or an aggressive act.

A. I think -- okay. I -- I -- from what you've just read to me it sounds like what it is saying is that one can act aggressively, for instance, while robbing a store, say, to obtain money, and that that wouldn't be evidence of an Intermittent Explosive Disorder, and I would agree with that.

Q. Why did Jon Hall go to that house that night?

A. From what I understand about the case, he went to the house to talk to his wife.

Q. Did you talk to him about why he went there?

A. Yes.

Q. What did he tell you?
A. He had gone there earlier in the evening. He wanted to talk about the Department of Human Services and what he and his wife were going to talk to the Department of Human Services about.
Q. Did he tell you he wanted to reconcile?
A. He had hopes of reconciling with his wife during this period, yes.
Q. When he went there he had hopes of reconciling, did he not?
A. I think -- yes. That was part of -- partly. I think during this whole period he did, yes.
Q. Now, that is purposeful conduct, is it not?
A. I don't know. I mean, if -- does it have -- did he go there with a reason? Yes. He was not just driving around randomly. That's right.
Q. That's purposeful conduct.
A. But that's very different from what you've read me in the DSM4 and that

really wouldn't apply.

Q. Why wouldn't it apply? Purposeful behavior.

A. What they're talking about is using aggression to gain something like money and that's not what happened in this case.

Q. Where does it say it's used to gain money in a DSM4?

A. If you could bring it to me?

(General Earls hand witness book.)

A. It says that "Aggressive behavior can occur when there's no mental disorder," and purposeful behavior means that the presence of motivation and gain an aggressive act so that they're using the aggression to get something else. It's not a loss of control. It's -- it's purposeful. It's more what the law would call cool and considered, and -- and so, that's -- that's different than did he have a purpose to go to the house. That's --

that's -- that really doesn't apply.
Q. Let me ask you this. Do you know where Jon Hall left -- the location he left from before he went to his house?
A. A bar.
Q. A bar. That's where he got drunk.
A. Yes. He -- several bars is my understanding.
Q. When he left there was he angry?
A. I think Mr. Hall is -- is often angry and I think when he's drinking that his control over his anger becomes even more impaired.
Q. And was he angry when he left the bar?
A. Yes.
Q. And how do you know that?
A. From what I've just said. That he is generally upset -- an angry kind of person and at that time he had a number of things going on in his life that were upsetting him even further.

Q. Was he explosive?
A. I think yes. He was very likely to be explosive at that time in those circumstances.
Q. And isn't it true or if the testimony at trial was from his cellmate that he went there for the purpose of either forcing her to reconcile or making her feel helpless, that is purposeful conduct, is it not?
A. As we've discussed, I've not read the testimony from the trial, so I don't know what his cellmate said. It's my understanding that he went there and perhaps with some hope of reconciling with her. I think he was also angry with her.
Q. But he went there with a motive.
A. I don't think he just went there randomly, no.
Q. All right. So at that point we rule out the explosive disorder, do we not?
A. No. Not at all.

Q. According to the DSM4 he's acting on motive.

A. No. He's not -- what the DSM4 says is that the presence of motivation and gain in the aggressive act and that is not at all what happened.

Q. Now, when he arrived at the house was he angry?

A. As we've discussed, yes. He was -- he's a general -- he generally is angry and the circumstances in which he found himself, he -- he had -- he was upset. I think he was angry and I think he lost control of himself.

Q. When he arrived at the house one of the first things he did was disconnect the phone line. How is that impulsive behavior?

A. By itself, that is not impulsive behavior and Mr. Hall says that the reason he disconnected the phone line is because -- to prevent his wife from calling the police and interfering in their relationship.

Q. He had motive, didn't he, in disconnecting the phone line?
A. Yes, he did.
Q. So we rule out Intermittent Explosive Disorder.
A. That by itself does not rule out Intermittent Explosive Disorder.
Q. Now, you just testified that when he left there he was explosive. When he left the bar you said he was explosive.
A. I said he had the potential to become explosive, yes.
Q. But he was not explosive when he arrived at the house and disconnected the phone line.
A. I don't think he was in a rage attack at that time, no.
Q. You said he had low serotonin.
A. Yes, he does.
Q. And that that is a lifelong condition?
A. It is a lifelong condition.
Q. So if he was not in a rage when

he disconnected the phone line, the serotonin then was not affecting his ability to control his anger.

A. No. You're -- that's twisting what I'm saying. Having low serotonin puts one at risk for explosive episodes. It does not mean that a person is continually in an explosive episode.

Q. Okay, but the fact that he had low serotonin when he disconnected the phone line did not cause him to be in an explosive rage, did it?

A. No, but that's not the point either.

Q. Now, the testimony at trial was that when he came to the door he forced himself into the house.

A. I've not read the trial transcript. I don't --

Q. Well, did Mr. Hall tell you about that?

A. I don't know that he told me he forced himself into the house, no.

Q. Wouldn't that be important in

your diagnosis?

A. I don't know.

Q. Now, is that purposeful conduct?

A. You're confused in thinking that having purposeful conduct rules out Intermittent Explosive Disorder. It does not.

Q. What was his purpose in going into the house then?

A. From what -- my understanding of this, he wanted to discuss with his wife the allegations -- the DHS allegations.

Q. Was he in a rage when he forced his way into the house?

A. I don't think he was at that time, no.

Q. Now, when he was in the house he kicked the wife's chair over according to the testimony. Would he be in a rage at that time?

A. From my understanding of it, he went into a rage when he and his wife were in the bedroom. I don't know when he kicked the chair over.

Q. If the kicking of the chair occurred before he went in to the bedroom, what does that mean to you, Doctor?
A. By itself it doesn't mean that he was in a rage.
Q. Well, your testimony was just now that he went into the rage when he went in the back bedroom.
A. That's my understanding.
Q. But here he is attacking this woman in her chair before he's in a rage.
A. I don't know.
Q. So that part of his violence was not the result of Intermittent Explosive Disorder.
A. I've not read the trial testimony. I don't know about him kicking the chair over and I don't know what it represents. My understanding --
Q. You're the psychologist.
A. -- from what -- from what --
Q. You don't know what kicking a

chair over represents?

A. I would have to read the testimony at the time of the trial and discuss it with Mr. Hall and then I could give you an opinion.

Q. Well, what does usually kicking a chair over with someone in it mean?

A. I think it could mean any number of things.

Q. Now, where did the rage begin?

A. It's my understanding that it began when he and his wife were in the back bedroom.

Q. Tell me how they came to be in the back bedroom.

A. I've read a couple of accounts of it. To discuss further without it being in front of the kids, I guess, is the one that --

Q. And what happened when he got back there?

A. Apparently, his wife said something to the effect of "Are you going to beat me like you did last

time?" Mr. Hall felt that he had never beat her and this provoked him to extreme anger.

Q. And?

A. And then he started beating her.

Q. She never hit him?

A. Well, she might have. I don't know.

Q. Well, you talked with Jon Hall, didn't you?

A. He didn't -- I don't think he told me that she hit him.

Q. Okay. She just made the statement to him, "Are you going to beat me like you did before," and then he just started beating her. Is that all he told you occurred in that back bedroom?

A. He said that he remembers that his wife was trying to make a telephone call, asking him if he was going to beat her like he did last time. He felt that he never did beat her and this enraged him. He remembers starting to hit her,

and then he remembers her running out of the house.

Q. All right. Now, Dr. Auble, the testimony at trial was Jon barricaded the door to the bedroom. Did he tell you about that?

A. Well, it's my understanding he was holding the door closed with his foot.

Q. Why would he hold the door closed with his foot?

A. At the time he was hitting his wife?

Q. Why?

A. To prevent -- I guess to prevent people from stopping him. I -- I don't know exactly.

Q. Isn't that the conduct of a man who was thinking?

A. Not thinking clearly.

Q. Well, murder very seldom is clear thinking, but the fact of the matter is Jon Hall according to your testimony and according to his statement

realized that people would be trying to help her, didn't he?

A. I -- I suppose. Yeah.

Q. And he put his foot against the door to prevent that from happening, didn't he?

A. Yes.

Q. That is purposeful conduct, is it not?

A. Intermittent Explosive Disorder does not imply that a person is not acting -- what you're trying to make it sound like, you can only have Intermittent Explosive Disorder is if you just flail around and hit whoever's around you without being aware in any way of what's going on and that's really not characteristic of it.

Q. Isn't it an uncontrolled rage?

A. It is an uncontrolled rage.

Q. How is a man in an uncontrolled rage able to think and reason, someone's going to help this woman. I've got to block the door. How is that an

uncontrolled rage?

A. It's my opinion it was an uncontrolled rage.

Q. It was not so uncontrolled that he could not manipulate the situation to keep her isolated, was it?

A. It's -- yeah. I mean, that's right. He was able to do that -- I mean, he was -- he was so angry that I don't think he had control of his actions at the time.

Q. Did his foot accidentally block the door?

A. No.

Q. He controlled that, didn't he?

A. I think he put his foot in front of the door, yes.

Q. He made the conscious decision to block that door to keep her from getting help.

A. People aren't unconscious when they're in an intermittent explosive rage.

Q. And he was able to control his

conduct, wasn't he?
A. It's my opinion that he could not control his conduct.
Q. Well, if he couldn't control his conduct how was it he could make the decision to block the door?
A. I don't think he could stop himself once he started beating his wife.
Q. From blocking the door?
A. No. I don't think he could stop himself once he started from beating on his wife.
Q. Now, if the testimony at trial was that Jon barricaded the door with a sewing machine and vacuum cleaner, that's inconsistent with what Jon told you, isn't it?
A. I don't know anything about that.
Q. Why didn't you review the transcript?
A. I wasn't provided with it.
Q. Why didn't you ask your lawyer

for it?
A. I did ask my lawyer for records -- general records and he did provide me with some.
Q. Isn't it important to know the facts of the case?
A. It might be helpful, yes.
Q. Might be helpful! What, are you going to make it up?
A. No. I had some access to the facts of the case, but I did not have the original transcript of the trial.
Q. Fact of the matter is, Jon's version is very inconsistent with what happened at the trial, isn't it?
A. I don't know if it's inconsistent or not.
Q. Well, the transcript will speak for itself, but he didn't tell you about forcing his way into the room and he didn't tell you about barricading that door, did he?
A. No. He didn't tell me about a sewing machine.

Q. Is that because he was being untruthful with you?
A. I -- I don't -- I don't think he was being untruthful, no.
Q. Aren't those two important details that you would like to have known about?
A. I don't know. Sure. I would've -- if that happened I would've liked to have known about that.
Q. What was Jon's purpose in -- after she escaped -- you testified she escaped. Is that correct?
A. I don't think I testified to it, but it's in my report that -- that she ran out of the house.
Q. How did she get away?
A. Not from my interview with him, but from the records that I reviewed, it was because of the intervention of the children.
Q. As a matter of fact, one of these girls jumped on his back. Is that correct?

A. That's my understanding, yes.
Q. And was biting him.
A. I don't know the details, but that's my understanding, yes.
Q. How does a -- did he ever attack her, the little girl?
A. I don't know.
Q. Well, if the proof at trial was that he did not, you don't dispute that, do you?
A. That he did not --
Q. All right. He didn't tell --
A. He did not do what?
Q. That he did not attack the little girl who jumped on him and was biting him.
A. I -- I don't -- I wouldn't dispute that, no.
Q. Well, did Jon --
A. I mean, one of the things about interviewing Mr. Hall about this is that he told me that he doesn't remember it very clearly because he was intoxicated.
Q. All right. Now, why didn't he

attack this little girl who was attacking him?

A. His rage was directed toward his wife.

Q. So someone who has jumped on his back and biting at him -- he could control his rage with regard to her?

A. It was focused on his wife, yes.

Q. Doctor, if the truth -- if the proof at trial was that while Jon was beating his wife he made the statement, "You will never live to graduate college," does that not tell you that he intended to kill her?

A. I think -- at that time I don't think he really knew what he was doing and he didn't --

Q. How can a man not know that he is going to kill someone when he expressly tells her "You will never live to graduate college?"

A. It's my opinion that he was having an episode of rage in which he could not control himself.

Q. But he knew she was in college.
A. Yes. He knew she was in college.
Q. He knew that his actions were killing her.
A. It's my opinion that he did not know that.
Q. Well, why did he tell her that she was going to die then?
A. I think he could not control himself.
Q. Now, the proof at trial was that when these children wanted to help their mother and started to leave to get help Jon told them, "If you go get help, I will kill your mother." How is that explosive rage?
A. I -- I think that at the time he was enraged. I don't know that he knows exactly what he did or said during that time.
Q. That statement implies that he knew the girls were going to get help, does it not?

A. I don't know.
Q. The whole purpose of disconnecting that phone was to prevent her from getting help, wasn't it?
A. From what he says, it was to prevent her from calling the police and interfering with their relationship again.
Q. Then his statement, "If you go to get help I'll kill her," implies that he was continuing in that line of thought. He was isolating that victim.
A. I'm not sure. I would need to know more about it. I'm not -- I don't know.
Q. And you don't know more about it because you didn't bother reading the transcript.
A. I did not read the transcript.
Q. Now, that statement that "If you go to get help I will kill your mother" also implies that Jon knows he had at least two options, doesn't it? To let her live or to kill her.

A. I don't think he was thinking that clearly at the time.
Q. Does that statement not imply that?
A. It implies that to you and me who are not in the grip of this Intermittent Explosive Disorder. I don't know that it implied that to him at the time.
Q. He directed that statement to his three little girls who are trying to help their mother. Does that not imply to you, Doctor, that he realized what they were going to do and that he was manipulating the situation to keep them from helping their mother?
A. It's my opinion that he was not in control of himself during the time.
Q. How was it that he was able to weigh his options if he were not in control?
A. I don't think he was weighing options.
Q. I can kill her. I can let her

live. Are those not two options that he weighed there?

A. It's my opinion that his actions were not deliberate and that he was not weighing options in any kind of cool manner at all.

Q. What fact witness did you talk to other than Jon Hall?

A. I have not talked to any of -- any of the fact witnesses. I've read some interviews.

Q. Other than Jon Hall what person have you talked to that ever told you that he was angry that day?

A. I've only talked to Jon Hall. I've read interviews and summaries other than his, but I've not -- the only person I've talked to in this case has been Mr. Hall.

Q. So you don't know of any one person other than the defendant, who we all know has already told you or misled you on two occasions that he was even angry that day. Is that correct?

A. I've not talked to them. I've read reports and summaries.
Q. Why didn't you talk to them?
A. Because I've read reports and summaries.
Q. Dr. Zager in her testimony said she talked to them.
A. Yes. I know.
Q. That's a better procedure, isn't it?
A. Not necessarily.
Q. Well, when you talk to someone you get a better feel for what they actually mean and what they saw, do you not?
A. No, not necessarily. If you've -- if you obtain that information through a reliable source, you can get just as good of information from a third party.
Q. What happened according to Mr. Hall when the victim escaped?
A. He said that he caught her and dumped her into the pool.

Q. Dumped her in?
A. I don't know if he used the words dumped. I used the words dumped.
Q. Isn't it true that he was standing in the pool forcing her head in the water?
A. He told me that he held her under water, yes.
Q. How did he catch her?
A. I guess he ran after her.
Q. Do you mean she had gotten away and he made the conscious decision to pursue her?
A. Yes. Being -- having an Intermittent Explosive Disorder does not mean that you're unconscious.
Q. He made a choice to chase his wife down.
A. Well, you can -- he was -- yes. He was enraged and he was focused on her and she was the object of his rage and he chased her.
Q. And the purpose of chasing her was what?

A. To catch her.
Q. And?
A. I don't know that he thought through what exactly he was going to do when he caught her.
Q. Couldn't it be that he was going to follow through on that threat, "You will never live to graduate college?"
A. I don't believe he was capable of making a deliberate and rational decision at that point.
Q. What fact during the homicide do you base that opinion on?
A. I base it not only on the -- the -- the events that happened at and around the time of the killing but also his history.
Q. Isn't it true, Dr. Auble, that the things that a person does and says during the time of a crime are most essential to making a determination as to their mental condition at the time?
A. Yes. They are very essential.
Q. Now, at the time of this crime

what fact or what statement of Jon Hall do you rely upon to say that he was not capable of premeditation?

A. It's my opinion that he was not capable of premeditation because of the mental disorders from which he suffers --

Q. In other words --

A. -- and because of the circumstances in which he found himself.

Q. In other words, Doctor, the answer to my question is that you don't know of any fact or any statement from the defendant during the time of the crime that you can rely upon to justify your opinion, do you?

A. I don't think that's what I said. I said that I -- in making that determination I take into account the mental disorders, the circumstances in which he finds himself, his intoxication and his behavior.

GENERAL EARLS: That's all I have.

RE-DIRECT EXAMINATION

BY MR. BUCHANAN:

Q. I wanted to refer you back to the part of the cross-examination where he said that both you and Dr. Zager, I believe, were testifying as to diminished capacity. Dr. Zager did not testify as to IED, did she?

A. No.

Q. And IED is an objective disorder recognized by the DSM, is it not?

A. Yes.

Q. It is one of, I don't want to say the few, but it is one of those disorders that can be backed up by an objective test showing low serotonin levels. Correct?

A. It can -- certainly low serotonin levels increase one's risk for suffering from that disorder, yes.

Q. If you -- that is an objective indication that you may very well suffer from it, in other words --

A. That's correct.

Q. -- as opposed to having to come to some conclusion based on interviews and what not.

A. That's right.

Q. Mr. Earls keeps asking about one fact. Was your opinion derived from any one fact or from the colossus of facts that were involved in the various social histories, interviews and things that you did to come to this conclusion?

A. My opinion is derived from more than one fact, yes.

Q. And just briefly again, to get to Intermittent Explosive Disorder would you almost have to have a good social history prepared for you to get to that?

A. Yes, you would.

Q. And why would you need that?

A. Because you need evidence of difficulties with anger control for a long period of time, not just for that one incident, and you need evidence of difficulties with anger control that occur when the person is not

intoxicated, you know, for instance, at the time of this crime he was intoxicated. So you would need -- to diagnose Intermittent Explosive Disorder you would have to have evidence that there had been other episodes when he's sober, when he's not intoxicated.

Q. Which is a good portion of what Mr. Earls was questioning you about ruling out intoxication as opposed to IED.

A. That's right. The episodes cannot only occur when the person's intoxicated.

Q. And, again, you can only find that out by either yourself doing the social history or having one provided for you.

A. That's right.

MR. BUCHANAN: I have no further questions.

RE-CROSS EXAMINATION

BY GENERAL EARLS:

Q. Dr. Auble, isn't it true that

there have been very little research in the area of Intermittent Explosive Disorder?

A. I don't know if I would characterize it as very little research, but it's not as well researched as some of the other disorders.

Q. Let me read to you from the DSM4 and ask if you agree or disagree with this statement. "Reliable information is lacking but Intermittent Explosive Disorder is apparently rare."

A. That would be research on the prevalence of it.

Q. "Reliable information is lacking."

A. Well, the reliable information is lacking regarding the prevalence which is what that sentence is directed toward. I don't -- the DSM4 does -- there's enough reliable evidence about Intermittent Explosive Disorder for it to be included in the DSM4.

Q. What causes low serotonin?

A. Childhood experiences are associated with it.

Q. Does that include post-traumatic stress disorder -- syndrome?

A. Can, yes.

Q. What did you do to explore post-traumatic stress disorder?

A. Mr. Hall did have experiences that -- as a child that could have caused a post-traumatic stress disorder. I don't see that in him, but it -- you know, the experiences that he had are capable of causing it.

Q. You didn't eliminate that diagnosis, though, did you?

A. I didn't diagnose him as that.

Q. But that's one that you should eliminate, isn't it? Post-traumatic stress syndrome?

A. Well, I did eliminate it. I mean, I -- I didn't -- he -- I didn't give him that diagnosis.

Q. Why not?

A. Because I didn't think he met

the criteria for it.

Q. Criteria are pretty limited to that, isn't it?

A. I'm sorry?

Q. What is the criteria for that?

A. There is three sets of criteria. One is recurrent intrusive recollections of the traumatic event. The second set involves kind of an emotional numbing set. The third set is hyperactive autonomic reactivity.

Q. And you said he didn't have that?

A. It's my opinion that he does not meet the diagnostic criteria for D -- the DSM diagnostic criteria for post-traumatic stress disorder, no.

Q. So, his early childhood experiences had no bearing upon his conduct during the crime?

A. I think his early childhood experiences did have a bearing on his conduct during the crime, yes --

Q. Isn't that --

A. -- but that doesn't necessarily mean that he has a post-traumatic stress disorder.

GENERAL EARLS: That's all I have.

THE COURT: Nothing further for this witness?

MR. BUCHANAN: No, sir.

(WITNESS EXCUSED)

* * *

(WHEREUPON, a recess was had, after which the following proceedings were had:)

THE COURT: Is the Petitioner ready to call his next witness?

MR. BUCHANAN: Yes, Your Honor. Judge, talking to Dr. Caruso, he would like to see this tape that we have tendered earlier. This would be a great time to play it. It might take about five minutes.

THE COURT: Okay. Be sure -- Mr. Hall. We can ahead and get Dr. Caruso in if you want to step -- he

wants to view the tape now. Correct?

MR. BUCHANAN: Dr. Caruso, do you want to go ahead and take the stand. You can view it better from there anyway.

DR. KEITH A. CARUSO was called and having been duly sworn was examined and testified as follows:

MR. BUCHANAN: Judge, just briefly -- I've turned the audio down. I don't think there's anything of significance audio-wise. This is just a typical, for lack of a better word, crime scene run through video by law enforcement officials.

THE COURT: No initial questions for the Doctor? You're just going to let him view it?

MR. BUCHANAN: Yes, sir.

(WHEREUPON, the videotape was played without sound.)

MR. BUCHANAN: Your Honor, the portion I intended to

tender is really over, but if the Court would like to see the rest of it I certainly have no objection.

THE COURT: Does the State want to comment at all?

GENERAL EARLS: No.

THE COURT: If the part that you felt was relevant to this witness has been shown, then it's fine to stop.

MR. BUCHANAN: Yes, sir. The inside of the house.

THE COURT: This is a tape that's part of Exhibit 13.

MR. BUCHANAN: Yes, sir.

DIRECT EXAMINATION

BY MR. BUCHANAN:

Q. Would you state your name for the record, please, sir?

A. Keith Allen Caruso.

Q. And, Dr. Caruso, how are you employed?

A. I'm in private practice. I'm a

forensic and general psychiatrist.

Q. And how long have you been a psychiatrist?

A. I completed my psychiatry residency training in 1994 at the National Naval Medical Center, commonly known as Bethesda Naval Hospital, and I did my forensic psychiatry fellowship at the Walter Reed Army Medical Center from 1996 through 1997. So I've been a forensic psychiatrist since that time.

Q. Briefly, would you give us a background as to your educational background and qualifications and service in the military?

A. Sure. Well, overall I have a BA in Psychology from New York University. I graduated Cornell University Medical College in 1990. I did my internship in psychiatry at Bethesda from 1990 to '91. '91 to '94 I was a resident in psychiatry; spent two years as a Division Psychiatrist at Camp Lejeune and then returned for forensic

psychiatry training, which basically consisted of two days a week at the Walter Reed Army Medical Center doing military cases and learning landmark case law. Some cases also at Bethesda. Two days a week at the Clifton T. Perkins Hospital Center, which is the Maryland hospital for the criminally insane. One day a week at the FBI Academy at the profiling and behavioral analysis unit where I worked on some unsolved crimes or crimes that had recently been solved that had some psychiatric component. One of the notable ones at that time was the Kizenski case. Also audited criminal law at Georgetown University and spent the final month of that year at the U. S. Disciplinary barracks at Fort Leavenworth, the military prison, essentially. Subsequently, I -- or actually, in 1995 I passed my Boards in general psychiatry. In 1998 I passed my Boards in forensic psychiatry.

Subsequently, I was Assistant Chief of Inpatient Psychiatry at Walter Reed for a year, then became Chief, and similarly, at Bethesda for the Forensic Service. I was Chief of that when I left the military in 1999. I've been in private practice since that time.

Q. When you left the military what branch and what was your rank?

A. I was a Lieutenant Commander. That's an L-4. It's equivalent of an Army Major and I've been in the Navy, as I said.

Q. Yes. And are you licensed to practice psychiatry here in the State of Tennessee?

A. Well, I'm licensed to practice medicine. I was originally licensed in Maryland in 1991. I've let that go inactive, I guess, as of '99. I've been licensed to practice medicine in Tennessee since '99.

MR. BUCHANAN: I would submit his qualifications as an expert, Your

Honor.

THE COURT: Any comment from the State?

GENERAL EARLS: No, sir.

THE COURT: So accepted. Go ahead.

Q. Would you tell the Court briefly what is the difference in a forensic situation between the use of a psychiatrist versus a psychologist?

A. Well, I think, although there's some overlap, a psychiatrist is someone who goes to medical school and has medical training and would look at organic causes or physical causes for a disease and the behavior that may result from those things, I guess is the primary thing, and then we'll go from there and also consider, you know, some of the psychological causes and stresses and things of that nature, but, essentially, it's a medical background that we come from originally.

Q. A psychologist would then not be

licensed to, for instance, draw spinal fluid to take serotonin levels, would they?

A. That's correct. That would be a medical procedure, so -- and I think they may be less well versed. Although, I can't speak for all psychologists, but they might be less well versed in those kinds of procedures and tests. They wouldn't be able to order them and they wouldn't be able to prescribe medications, things of that nature.

Q. How long has the serotonin level as an indicator of possible Intermittent Explosive Disorder -- how long is that -- in the area in which you practice, how long has that been fairly accepted?

A. Well, it's been a number of decades. Actually, people became interested in serotonin originally when they began looking at the brains of people who successfully completed suicide and what they found was in a subgroup of those persons that they had

had ~~very low~~ levels of serotonin in their brains. And, actually, they began looking at that a little bit more closely and they found in particular that people who had chosen violent means for committing suicide -- shooting themselves, hanging themselves, stabbing themselves, things of that nature -- actually had the lowest levels. So, although, initially, people were very suspicious of -- about a relationship between serotonin -- low serotonin and depression, they also began to say, hey, maybe there's something here in terms of impulsivity and control of violence because violence may be directed at the self or it may be directed at others. And, subsequently, one of the things that they've looked at have been the serotonin levels. You, obviously, don't want to be taking brain biopsies from living individuals. So what they've been doing is looking at the fluid in which the brain resides, the cerebral

spinal fluid, and that can give you an idea of serotonin function in the brain and what they've -- what we've subsequently found is that people with depression tend to have levels of actually the major breakdown product of serotonin, 5-hydroxyindoleacetic acid. They tend to have lower levels of that which kind of tells you how much serotonin's been used. They have lower levels of that in depression, about 20 points lower than what normal people would have, and people with problems with impulsive violence and explosive violence have levels that are much lower, about half of that. So that's how the field has evolved, but this concept's been around for a number of years.

Q. Would it have been available to attorneys that had been looking for it, say, in the years 1995 through 1997?

A. Yes.

Q. The serotonin test -- before we

had serotonin there was such a thing as IED, was there not?

A. Yes. I believe so.

Q. What does the serotonin --

A. Well, let me clarify that. More recent research has focused on the issue of looking for biological markers for various psychiatric conditions. One of the things that we found, and one of the things I think that the General was pointing out, was that there are a number of diagnoses that must be considered in the differential diagnosis of Intermittent Explosive Disorder, and recent research by Emil Coccaro -- C-O-C-C-A-R-O -- that was presented to the American Psychiatric Association Convention in the last few years has focused on the issue of should we be making the diagnosis of Intermittent Explosive Disorder in people with antisocial personality disorder and Borderline Personality Disorder and other conditions and one of the things

he began to look at was the issue of, well, if people meet criteria for these other diagnoses and they don't engage in explosive violence either towards themselves or towards other people, do they have low levels of serotonin? The answer to that question was, no. That it's only -- only in the subset of people who have inter -- who essentially meet criteria for Intermittent Explosive Disorder, that's the subgroup of people with these other diagnoses that have been listed in the differential diagnosis that have that. So there's a very strong argument now that this is a biological marker for Intermittent Explosive Disorder. Whereas, it's not something that you routinely see in antisocial personality disorder or you routinely see in Borderline Personality Disorder or that you see in Attention Deficit Hyperactivity Disorder. So this is looking to be a more specific test. It hasn't been incorporated into the DSM

yet because the DSM4 was written in 1994 and Dr. Coccaro's research is more recent, but I think that we might start seeing this in DSM5 and beyond so that this -- you know, there are revisions of the *Diagnostic and Statistical Manual* as new information becomes available and we do have this -- we do have a new edition coming up, I believe, in the next few years that, you know, most likely will list things such as this.

Q. So serotonin is -- the serotonin level is an objective test that indicates IED the way a blood test might indicate the person has an infection. Is that fair to says?

A. I think we're approaching that point, yes.

Q. So it becomes more than just an opinion of an expert. It -- you're looking for biological markers that are objective that back that up.

A. Well, and one of the things that in considering all of this I had been

saying among the diagnoses when you and I conferred that we need to rule out Intermittent Explosive Disorder and you were saying, "Well, what do you need to do that," and that's when I said, "Well, I think there are two things that could be causing someone to have impulsive violence. One that we're seeing is Intermittent Explosive Disorder in individuals such as this in a situation such as this. One would be Intermittent Explosive Disorder and let's look at his serotonin level. The other could be that he's got some neuropsychological impairment from some -- you know, from a brain abnormality. So that was the whole purpose for -- to bring Dr. Auble into the case as well, to make sure that it wasn't something that was otherwise a problem with his brain.

Q. And Dr. Auble was basically a rule out. She ruled out that it was something of that nature. Is that correct to say?

A. Well, I think there were other things that came from her evaluation that were helpful. I think looking at some of the Rorschach responses -- or the scoring of the Rorschach indicating things that this is someone who looks for simple solutions to complex problems. This is someone who has difficulty modulating his emotional responses. Again, here are other measures that, okay, not just in this particular case do we see evidence that this individual acts in this way, but even if we go in other unstructured situations where other people with -- who have this diagnosis and have similar problems controlling their emotions, how do they respond and we started seeing similar responses in Mr. Hall that we've seen in some of these other cases as well.

Q. Tell the Court exactly how the serotonin levels came out on -- when Jon was tested.

A. I have a report from Dr. Ronald Salomon at Vanderbilt, and Jon Hall's level of the major metabolite in serotonin, CSF 5-HIAA, I guess is the abbreviation we like to use, was 70. That's -- and I think he rated that being in the bottom five percent.

Q. Is that --

A. And the normal level is 139.1, so it's roughly half the normal level. He says here --

Q. So he's in the bottom --

A. I'm sorry.

Q. I'm sorry. So he's in the bottom five percent of the general population?

A. Yes.

Q. Is that what you would've expected to find in someone that has IED?

A. Yes.

Q. And is there any way that can be faked by the individual that has the test performed on them?

A. I don't know of any way that someone could fake it or manipulate their level to come out that way.

Q. Would you tell me exactly -- when you're called in as a forensic expert, what is your role to serve in the defense or for that matter the prosecution of a case?

A. Essentially, to -- there are questions -- specific questions that I'm asked by an attorney, whether it's a defense attorney or prosecuting attorney, relevant to the case. For example, in some cases there are questions about competency. Others about insanity. Others about mental state at the time of the offense. Others about mitigation. Sometimes there are questions depending on the jurisdiction where a complaining witness is complaining of rape or child sexual abuse. So, again, there would be issues about seeing, for example, if those individuals -- the complaining witness

has post-traumatic stress disorder that essentially appear to begin at the time -- just after the time that they alleged that they were traumatized. So there are various questions like that, but essentially there are questions that are posed to me. On occasions things, you know, come up for me and I'll ask an attorney about, would you like to pursue an evaluation of this as well, but, generally, there are questions that people pose and I do an objective evaluation and come up with findings and, I guess, about two out of seven times those are findings that the side that has contacted me are interested in having me testify about.

Q. Have you testified for the prosecution as well as the defense?

A. Yes, as recently as last month at Fort Campbell.

Q. How important -- when you begin a forensic evaluation, how important is the social history that you are

provided?

A. It's very important. I think one of the things in terms of -- I think defendants or patients in general don't always give accurate histories in terms of what it was like for them growing up. Sometimes there are things that had occurred; there are family secrets that they're unaware of or there are things that occurred when they were too young to have a fair recollection of that. So social history can be very critical. It also helps to -- you know, when I come to a diagnosis I would like to look for -- let's say, if I diagnose someone with Borderline Personality Disorder, I would like to see that there is a social history that would fit with that type of condition and that is not a condition that arises in a vacuum. Generally, we see a situation in which there is abuse and neglect and things of that nature that tend to occur in the pasts of people with this condition. So I look

for something that's an internally consistent theme throughout a person's life.

Q. In referencing back to Dr. Auble's testimony, wherein she said there needed to be enough social history to see if these episodes occurred outside of intoxication, is that exactly the kind of things you're looking for in a thorough social history?

A. That would be one of the things, yes. I mean, essentially, if you're looking at someone who's an alcoholic and has episodes of violence while they are drunk and doesn't have them at any other times, then, yes. That would be a situation in which, I think, you would rule out Intermittent Explosive Disorder.

Q. Would you have expected -- for instance, I hired you and said, Doc, just go get your social history from Mr. Hall. Would you have expected that to be good enough?

A. I can't say that someone could never provide a good social history because, you know, you never say never, but I think that in cases such as this the standard of practice is that you would -- that essentially -- one of the things that I recommend is if someone hasn't already done it, hiring a mitigation specialist, investigators, things of that nature, because they all provide a lot of information that can be useful in the formulation of the case.

Q. Speaking of minimums in performing a social history, I'm assuming that, you know, you can't talk to everybody in the United States that's ever had any contact with the person, but what are the minimum people that you would think that you would need to interview in compiling a social history as far as people in relation to the defendant?

A. I think friends and family are very important. Past employers could be

very important. Certainly, friends, you know, and friends throughout the course of one's life, not just at one particular point, but -- as I think we've seen here, there were people that knew him when he was growing up. There are people that knew Mr. Hall and Billie Hall, also, and knew about their relationship as well, so --

Q. So if a person had immediate -- several brothers and sisters in the immediate family, you would consider that part of the minimums that needed to be provided to you at least in the social history?

A. Sure. I would want -- if they weren't interviewed I'd want to interview them myself. One of the reasons I don't interview them myself is that the expenses -- that could be very expensive. I believe that a lot of these investigators and mitigation specialists are much less costly per hour than I am. So -- there are times

when I do interview other people but it depends on the nature of the information that I receive.

Q. So, for instance, if you got some confusing information about what one sister said or something, you might take it upon yourself to call the two sisters and try to resolve whatever it is that you think is cloudy, but, in general, that's going to be left to the attorneys getting that to you.

A. That's correct.

Q. In this case could you tell the Court what materials that you were provided and what materials you availed yourself of --

A. Sure.

Q. -- in making this evaluation?

A. I've just seen a video. Also, I had a transcript of State versus Jon Hall from 1997. The excerpts that I've read included motions, testimony from Jerry Bingham, testimony from Brian Byrd, testimony from Chris Dutton,

Stephanie Lambert, Cynthia Lambert, Jennifer Lambert, the medical examiner, Dr. O. C. Smith, Dr. Zager. Let's see, psychologist Joe Mount, Randy Helms, Debbie Davis, Kathy Hugo, Cheryl Arbogast, Carol Alexander. There was also mitigation information from Ann Charvat, correspondence with another attorney, Edward Martindale, regarding a civil suit. There was some media clippings. There was Jessica Hall's medical records. There were TDOC mental health records for the defendant. There were records from Middle Tennessee Mental Health from, I believe, a competency and sanity evaluation that were done in '95, disciplinary records from TDOC. There were memos from Glori Shettles who had been a mitigation specialist previously in this case and interviews that she had done with various family members. A time line done by Danese Banks. Numerous interviews by Ms. April Higuera with the

defendant over a span of, I guess, about two years. Interviews by Ms. Higuera of family and friends. A genealogy memo that Ms. Higuera had provided. Written materials that Ms. Arbogast had provided. More mitigation timelines. Memos about the trial audiotapes. Interview of Judge Whit LaFon by Ms. Higuera and other witnesses. Dr. Auble's neuropsych eval and Dr. Saloman's report.

Q. Did you --

A. I also -- I also interviewed the Defendant on January 28, 2002 for three and a-half hours and on March 19, 2002 for four hours.

Q. All right. And did you yourself perform any objective tests yourself or --

A. I don't -- I'm not a psychologist, so I don't do psychologist testing.

Q. So that was done by Dr. Auble and Dr. Salomon as far as the neuropsych

testing and the serotonin level testing.
A. That is correct, and there had been some prior medical tests conducted by Middle Tennessee when they did their evaluation including a CT scan. I think there was an EEG and screen laboratory studies such as blood tests that all were within normal limits.
Q. So after you've reviewed all these materials and you interviewed Jon Hall, what were your first impressions concerning Mr. Hall?
A. Well, I think there are a number of things. I think there was a lot of evidence of character pathology which one would expect in light of the dysfunctional home that he grew up in, but on top of that there are also -- and there also seemed to be a great degree of substance abuse, both in Mr. Hall and also in family members. There was a lot of major depression in family members. Mr. Hall had a history of depression. I -- I -- I felt that it wasn't just an

adjustment disorder in that he seemed to respond to some anti-depressant medication that he'd received. I believe back in 1995 he was on Imipramine and, although he couldn't tolerate the side affects, had done somewhat better and reported feeling better on that medication. In addition, there was a history of numerous episodes of Mr. Hall exploding into violence either where he assaulted people or where he destroyed property, and I became suspicious on that basis of Intermittent Explosive Disorder as it seemed that there were times that that could not be accounted for by intoxication alone, and essentially -- also I have spoken to you about some of the outbursts and I've read about some of his outbursts in court, I believe, in a prior trial. And, again, there really seemed to be a lot of difficulty controlling his, you know, his behavior -- controlling his emotions. And, also,

consistent with that, that the only thing that seemed to have changed between those explosions and then being more conciliatory in terms of speaking with you that he -- you know, only time had elapsed.

Q. What does intoxication do to someone that has IED?

A. And there's nothing mutually exclusive also about being an alcoholic and having Intermittent Explosive Disorder. In fact, there's a very high co-occurrence of those two conditions, and they can be cumulative. So alcohol reduces impulse control. We -- individuals tend to do things when they're intoxicated that they wouldn't ordinarily do. Similarly, I think folks with Intermittent Explosive Disorder also have poor control of their impulses, so that you've got two things now together. One is intoxication. It's the introduction of a foreign substance into the body, but you've got

two conditions that can reduce impulse control. Also we've seen that violence prone individuals when they are depressed also tend to have problems. Again, that's another factor that needs to be considered, and these aren't mutually exclusive. It's not like someone with Intermittent Explosive Disorder can't be depressed and it's not like they can't get drunk.

Q. Someone with Intermittent Explosive Disorder is not what you would legally call insane, are they?

A. That is correct.

Q. Would you tell the Judge basically what's the difference between the culpable mental state with someone with IED versus a person that's insane?

A. Well, our insanity standard here is if someone has a severe mental disease or defect, and in that regard, Intermittent Explosive Disorder would qualify; however, as a result of that severe mental disease or defect they are

unable to appreciate the nature or the wrongfulness of their actions. So they either don't understand what they're doing at the time of the offense or they don't recognize that it's wrong. They may have a delusion. Let's say that they perceive they're acting in self-defense when they attack somebody. So, therefore, if they thought they were acting in self-defense, they wouldn't think that they were doing the wrong thing. There is a recognition with someone with Intermittent Explosive Disorder that they should not be doing this thing, but the ability to control themselves, the ability to stop themselves, the ability to turn down the emotional thermostat to be able to exercise judgment on that and follow through is impaired. That's where the problem is for these individuals. When he puts his fist through a wall or kicks through a wall, well, he knows it's not a good thing to do but the capacity to

stop himself isn't there. I think it may be similar in regard to someone in a manic episode who has bi-polar disorder who can't control themselves as well. So they may recognize what they're doing is wrong but the capacity to, you know, to -- to use that impact upon their actions and to make a -- to make a fully reasoned choice about this is not -- isn't there.

Q. So they're not insane, but how does that affect what we in the law call premeditation?

A. Well, I think that there could be two ways. One is -- you know, I think sometimes you have to look at the issue of did someone pre-plan what they did, and I think that's one leg of premeditation, but the other is did they commit their action in a cool state of mind? Is there an absence of -- I think the statute says it must be -- the mental state must be carefully considered to be certain that there's an

absence of passion and excitement at the time of the offense.

Q. Were you able to render an opinion or have an opinion as to whether or not Jon at the time was capable of premeditation in this particular episode?

A. I felt that because of Intermittent Explosive Disorder, major depression, and intoxication, but I think mostly Intermittent Explosive Disorder, although, I don't know if I can really separate how much out for reach one -- that he was unable to -- he was unable to achieve the mental state of the absence of passion and excitement.

Q. The people that suffer from IED and commit the killing of another individual, is it quite often the fact that they are doing it under a passion consistent with manslaughter, for instance?

A. That would -- that's certainly a

possibi -- that certainly occurs in some cases, yes. I think that's a legal matter more left to the Fact Finder than myself. I think it's a reasonable argument, but how exactly to apply those things I think goes beyond what a psychiatrist does --

Q. But it -- it --

A. -- in terms of manslaughter in that I guess we're talking about -- as I understand that statute, it is that even a reasonable person would be driven to act irrationally under the circumstances and I don't know that -- necessarily that the Courts have specified yet about the issue of if you've got an illness does that necessarily -- is that something that you count in -- you know, if a -- if a reasonable person were suffering the same thing. I don't know that that's been ruled on necessarily, but I've certainly seen it argued and it seems reasonable from a psychiatric standpoint to make that analogy.

Q. But, of course, a jury has -- a Fact Finder has to hear this stuff before they can make those conclusions. Is that --

A. Yes.

Q. What did you -- what became your ultimate conclusion as to what -- what your evaluation of Jon uncovered?

A. I felt that he met criteria for a number of diagnoses. I want to make sure I list them all. I felt that at the time of the offense he had Major Depression, Intermittent Explosive Disorder. I felt that he was dependent on alcohol, so he had alcohol dependence. He had dependence on marijuana. Cannabis dependence. I felt that he also had a history of polysubstance abuse where he abused a lot of other substances, such as LSD and Valium and other drugs, and I also felt that at the time of the offense there was evidence to indicate that he was suffering from alcohol intoxication as

well. I felt also that he had met criteria for several personality disorders, including Narcissistic Personality Disorder, Borderline Personality Disorder and Antisocial Personality Disorder. I didn't feel that there was a medical condition impacting upon his mental state other than the ones I've specified here in terms of the depression and the Intermittent Explosive Disorder, et cetera. I also felt that there were a number of stressors at the time of the offense or that we list on Axis IV, including his fears of abandonment by his wife at the time of the offense, his daughter's disability and her special medical needs, the financial stressors related to his earlier unemployment. In addition, his brother's dying of AIDS at that time also were stressors operative at the time and, I think, at this time and not at that time we had the stressors related to legal charges. I

felt that at the time of the offense he had a global assessment of functioning score of about 40. More recently it's about 55, and that's on a scale of 100 where someone with a scale of 31 -- a score of 31 to 40 would be seriously impaired.

Q. What -- and when you say Axis I or Axis II, could you tell me in layman's terms what that means?

A. Axis I would indicate severe psychiatric disorders. If we're talking about in legal terms severe mental diseases, that's where they would be listed, on Axis I. On Axis II we would have conditions such as personality disorders which are generally descriptions of an individual's manner of interacting with and viewing the world. Things of that nature. His overall behavior patterns over a long period of time. You might also list mental retardation on Axis II. That's not relevant here, but that's how those

two Axises break out.

Q. All right. Did you notice in the film that we viewed before you testified that there was beer bottles around the crime scene?

A. There were numerous beer bottles that I saw.

Q. Is that consistent with your feeling that he was intoxicated at the time?

A. I don't have an account that anyone else put those beer bottles at the crime scene. It suggest that he was in addition to accounts that he'd given.

Q. Is -- Doctor, at the trial it was virtually left in the record uncontested that he had disconnected the phone lines. Were you able to rule that out as evidence of premeditation or was that, in fact, evidence of premeditation?

A. Well, I think the way that I -- the way that I -- rather than usurp the Fact Finder's position about what it

really meant, I think -- I recognize the State had an account that this was a measure of premed -- an indication of premeditation. He also gave an account of having done this essentially so that he would not be interrupted when he went over there, essentially that he -- he knew he was breaking the Order of Protection. He didn't want the police called on him because he wanted to speak to his wife. He also had indicated, and others had indicated corroborating what he said that there were numerous other times that he'd disconnected phone lines, both in that relationship, at home with his mother, I guess, also in another incident with Kim Whittaker, and not only -- it wasn't just Mr. Hall that had a habit of doing this, but this is something that he learned at home from his dad. His dad would -- when his father and mother would fight, which occurred with some frequency according to Mr. Hall and also his family members,

it wasn't uncommon for his dad to pull the phone lines so that -- and the children would have to go next door to call the police or something of that nature.

Q. But you as a mental health professional would not have known that absent having a good thorough social history background, would you?

A. That's true. In this case I don't believe I would've known -- I wouldn't have had the corroboration, certainly. I don't know that I would've known about it. I think something else about Mr. Hall -- you know, this is someone with a lot of personality pathology who does not interpret things the way that all the rest of us interpret things and may be motivated to do things for idiosyncratic reasons. You know, I think there are numerous -- there are numerous things that indicated that over the course of his life. That this is not someone who's walking to the

same -- the beat of the same drummer as the rest of us, and while that generally looks like evidence of premeditation, there seems to be some evidence here that that could be interpreted in another way.

Q. All right. Do you -- you said in effect that you're not saying that he's insane.

A. That is correct. Well, I don't know that I -- I don't -- I don't see evidence that would support an insanity defense.

Q. Right. And you're not saying he was incompetent.

A. I don't believe that he's unable to understand the nature of the proceedings against him or assist in his defense or weigh the consequences of the trial at this point.

Q. If you were hired in 1995, '96, '97, could -- were these technologies and tests, et cetera, available to you that you could've produced this or

similar testimony --

A. Yes.

Q. -- in 1997?

A. Yes.

MR. BUCHANAN: Thank you. Pass the witness.

CROSS EXAMINATION

BY GENERAL EARLS:

Q. Dr. Caruso, are you a member of any organizations or associations that are primarily made up of members of the Defense Bar?

A. Yes. I was invited by the Tennessee Association of Criminal Defense Lawyers to join as a non-attorney member and to participate, I guess, in their E-mail string and offer some consultation on those cases. Sure. I also consult with the prosecutors up at Fort Campbell.

Q. On one case?

A. No. Several, and I've given lectures to them.

Q. During your private practice?

A. Yes.
Q. And you give lectures to the Defense Bar, do you not?
A. I give lectures to anyone who invites me; University of Tennessee at Chattanooga, undergraduate students, graduate students. Williamson Medical Center has arranged for me to give talks on various things. Sure. I mean there's a degree of marketing that, you know, you have to do.
Q. The bulk of your cases come for -- are testifying for the defense. Is that correct?
A. I've been hired by more criminal defense attorneys than by anyone else over the last two, three years. It was about even before that, but that's the way it's fallen, yes, and -- although, I think it's somewhat misleading to say the bulk of my testimony is for the defense. I decided to look at it and it turned out in the first 70 cases I completed I testified 20 times for the

defense.

Q. Have you ever had to alter your opinion that you gave in Court?

A. No.

Q. You've never taken a stand and sent a letter or --

A. Oh. Okay. That's a good point. No. I didn't alter my opinion. I was mistaken about a fact in the Paul Reed case. I had said that Mr. Reed -- during a competency evaluation I had said that during one of the interviews he never -- never could remember the charge of attempted murder, when, in fact, he had remembered that initially when -- the first time I asked him the question, and then when I went back and asked him later in the interview about it he couldn't recall it. I asked him about it numerous times at that point saying, "Well, what's the critical issue in this case," and he wasn't able to remember it. But I -- I -- I -- you're correct about that. I misspoke myself a

moment ago in terms of the issue of did I miss on a fact. Yes, I did, and when I reviewed my notes I wrote a letter to Judge Blackburn stating such. I also stated in that that my opinion was not affected. That I still believed that he -- well, that's irrelevant, but it didn't affect my opinion. I thought the issue was much -- it was much more important that he was unable to forget that -- that he was unable to remember that than that he remembered it only one time.

Q. Isn't it true that the Judge in that case had to call another expert to come in and give an opinion because you altered your testimony?

A. I don't believe that was the reason why.

Q. He did do that, though, didn't he?

A. She -- she went and got other experts subsequently, yes. But I believe what her -- as I understood the

reason was because she felt that I had not been given all relevant information.

Q. Now, if I can sum up your conclusion here that as a result of intoxication, drug use and this Intermittent Explosive Disorder, that's why Mr. Hall committed this act against Billie Jean. Is that correct?

A. There were a number of factors and I think that principally, as I state in my report, that he was suffering from two severe psychiatric disorders at the time of the alleged offense; Intermittent Explosive Disorder and Major Depression, and that both were linked to a deficit in serotonin metabolism which has been demonstrated here. I think also that there -- you know, I think certainly intoxication can reduce one's impulse control as well.

Q. Are you qualified to eliminate all of these factors that you've just testified to as a result or a cause of this man's anger?

A. Well, I think that that's -- I'm qualified to make -- to do this evaluation I'm qualified to weigh how each of these things factor into it. I think you're missing the point, though, sir, in terms of eliminate. I don't think it's eliminate. You're suggesting that this stuff -- that these things must be mutually exclusive and that they can never co-occur, and I believe that you are mistaken in that assumption.

Q. Let me read to you from the DSM4.

A. Yes.

Q. "The degree of aggressiveness expressed during the episode is grossly out of proportion to any provocation or precipitating psycho social stressor. A diagnosis of Intermittent Explosive Disorder is made only after other mental disorders that might account for episode of aggressive behavior have been ruled out."

A. Yes.

Q. Did you rule these out?
A. I ruled out that these were the -- I ruled out that these were the causes and one of the -- as I said in my direct testimony, one of the things that I looked at was the issue of people with Borderline Personality Disorder and Anti Social Personality Disorder who do not have intermittent explosive -- who do not have low serotonin do not tend to commit these acts. So I think in terms of looking for was it just that he had these conditions that would've accounted for this -- essentially, those conditions alone because of what we know about Mr. Hall's serotonin metabolism would not have accounted for this. Also, this is not carefully planned, premeditated violence, let's say, in the course of -- murder in the course of an armed robbery or something of that nature or a coolly considered plan to murder someone to get the insurance money or something of that nature.

Q. Did -- he was drunk. Is that right?
A. I believe so.
Q. His intoxication contributed to his anger, didn't it?
A. I don't necessarily agree with that statement. I think that one may be more prone to become more emotional when one is intoxicated. So I wouldn't say that being drunk causes one to be angry because I've seen people who drank and became elated. I've seen people who drank and became sad. So I don't think that you can -- I don't think that there's a direct linkage. I think that they are associated and I think that someone has a greater tendency to respond more emotionally and have a lesser control over their emotions when they are drinking.
Q. Did Mr. Hall's intoxication have anything to do with his anger?
A. It has -- I believe it made it more likely that he would become more

angry and have less control over his anger.

Q. So that affected it?

A. Yes. That would be one affect.

Q. His consumption of marijuana, did that affect his anger?

A. That generally does not. Marijuana has not been associated with -- marijuana intoxication has not been associated with aggressive behavior to the degree that other drugs and alcohol have.

Q. Polysubstance abuse. What substance are you talking about?

A. He's abused various substances over the years. If you'll indulge me for a minute. Now, abuse also like alcohol dependence and marijuana dependence -- that does not necessarily indicate that at that particular time the individual was intoxicated on those substances. It just means they have had a pattern of using these substances in a maladaptive way. I don't have anything

to indicate at the time of the offense he was abusing the following substances, although, he had abused them in the past: LSD, powder cocaine, amphetamines, Maxalert, Valium and Demerol.

Q. What did you do to rule out Borderline Personality Disorder as contributing to his anger?

A. As I said before, I think that he does meet criteria for Borderline Personality Disorder; however, I think that essentially since we have seen that patients with or individuals with Borderline Personality Disorder who do not have histories of explosive violence don't tend to have the low levels of serotonin. I felt that the diagnosis of Intermittent Explosive Disorder was justified and did, in fact, account better for this because I've seen plenty of patients with Borderline Personality Disorder who do not engage in extreme impulsive violence.

Q. The DSM4 says you've got to rule that out. You're telling us you don't.
A. I -- you are saying the DSM4 says you have to rule out Borderline Personality Disorder as the cause of that act, and I'm telling you how I ruled out Borderline Personality Disorder as the cause of that act and also as the cause of numerous other acts this man has engaged in.
Q. And what did you do to -- tell me again what you did to rule that out.
A. What did I -- again, research has shown that low levels of serotonin are not seen in individuals with Borderline and Antisocial Personality Disorder who do not have problems with impulsive explosive violence.
Q. When was that research done?
A. It was presented by Dr. Emil Coccaro at the American Psychiatric Association Convention, I believe, in 2001. He's also got a grand rounds on the Internet that he did at the

University of Chicago that you can look up. Right now I don't know the exact date. It might've been 2000 or later.

Q. Then that information was not available in 1995.

A. Well, I think in terms of the issue of how do you justify the differentiation here, I don't know -- well, I don't know when Dr. Coccaro began his research. One of the things in looking at patients with Borderline Personality Disorder is we have begun to suspect over the last several decades that these individuals may have biological abnormalities. There is a great co-occurrence of Borderline Personality Disorder with other psychiatric disorders, and one of the things that we have begun to look at is are there particular things that can help us or, for example, associated conditions, that might guide us in what medications we may want to use or if we should use medications at all. So I

don't know when he started doing that. I think certainly we have been using medications in patients with Borderline Personality Disorder and we've been -- they've been reserved for patients generally who had problems with loss of control over violent impulses, and I think what we're seeing here is that, you know, the diagnosis certainly existed in 1994 and I think we're certainly seeing here that it's appropriate to make that additional diagnosis.

Q. But the bottom line is he didn't talk about all that until 2001.

A. He did not publish definitive results, but I think it would've been reasonable to pursue.

Q. That is not part of the DSM4, is it?

A. It is not currently part of the DSM4.

Q. It wasn't when this case was tried, was it?

A. Well, I think there were some -- there's mention in there that there were some links to things such as this, but it wasn't -- it's not yet a definitive diagnostic criteria; however, I think -- you know, I think now that we have DNA testing we don't say that, well, DNA testing didn't exist years ago, so let's not consider whether or not it has any bearing on this case.

Q. Well, the fact of the matter is, someone doing research on that in 1995 would not have had that information to rely upon, would they?

A. I don't know that -- well, no, that's not necessarily true because one of the things I talked about earlier would have been the linkage of violent suicide victims had the lowest levels of serotonin in their brains. So it really would've been reasonable to begin looking at this and I think that's probably one of the reasons Dr. Coccaro probably started doing research on this

issue, although, I haven't spoken to him directly about that, but the linkage between impulsive violence, whether directed at the self or directed at others, has been around for decades.

Q. "Reliable information is lacking but Intermittent Explosive Disorder is apparently rare." That's what the book said. Are you saying that the book is wrong?

A. I think it is, apparently, rare, but that doesn't mean that I haven't seen, you know, individuals who have it. I've seen individuals who have Tourette's Syndrome. That's very rare.

Q. Jon Hall -- it's been testified he left the bar or pub before he committed this act. Is that correct?

A. Yes.

MR. ELLIS: I'm going to object, Your Honor. He did not testify at trial.

GENERAL EARLS: I didn't --

MR. ELLIS: That's what you just

said. He testified.

GENERAL EARLS: I said it's been testified to and that was Dr. Auble.

THE COURT: Note stand corrected. Okay. I misunderstood him, too, Mr. Ellis, but he's corrected it now. Ask the question.

Q. Dr. Auble testified that Jon Hall left the bar before he committed this act. Is that correct?

A. That's what I heard her say and I -- furthermore, that was his account to me.

Q. Was he in a rage then?

A. Well, what he had told me was he was preoccupied with his relationship with Billie and he grew progressively more depressed as he continued to drink. He was crying over their relationship. So, I think he was certainly upset, but I don't -- I don't believe that he was in a rage.

Q. So the existence of this serotonin level did not cause him to be

in a rage even though he was upset.

A. That's not what I'm saying. Essentially, having a low level of serotonin -- serotonin is a chemical in the brain that has an inhibitory function. It helps us essentially when -- it helps us to control our impulses. It's one of those -- if we look at -- if we get down to the chemical basis of what helps us control behavior, what's been shown is that individuals who have deficits in serotonin have deficits in impulse control. It also has been shown that there tends to be a linkage between depression and low serotonin function, but that's not as pronounced as in the folks who have problems with low impulse control.

Q. Proof at trial, according to the transcript, according to the cellmate of Jon Hall, is that he went to that house for the purpose of forcing her to reconcile and, if she refused to reconcile, then he was going to make her

feel as helpless as she ~~made him feel~~.

A. I would agree that that was the testimony. I -- you know, I'm not the Fact Finder. I don't know exactly how much credibility to assign to the testimony of a, you know, jailhouse snitch.

Q. Why would you judge his credibility at all? Is that your function?

A. No. I didn't and I think I -- I think what I tried to outline in my report also was that there were divergent accounts of the events of that night, and were someone to accept Mr. Hall's account of what happened that night, then these factors would certainly apply.

Q. Okay. Taking that to be the testimony, doesn't that indicate to you that he had formed the intent to cause her harm prior to this condition occurring?

A. Well, I think that there are a

number of things. Again, one must consider the credibility of the source. One must consider the credibility of Mr. Hall -- Mr. Hall's statement at the time that he may have said that, if he said it. I don't know that he said it. I know that it's been reported that he said it, but was it something that was said in, you know, in a moment of bravado? Was he in with someone who he thought was a murderer and he wanted to appear tough? I don't know necessarily and I didn't examine specifically about that issue, and I think that's something that -- you know, there are various ways of looking at that, but it appeared from the trans -- I think you've done an accurate representation of what I read in the transcript.

Q. Now, what did Mr. Hall tell you about going over there?

A. Could you be a little more specific in the question, actually, sir?

Q. Why did he go over to that

house?

A. Okay. He initially called Billie to discuss what they would say to the DHS worker during her next visit. I think he also certainly wanted to see if he could reconcile with her.

Q. So the jailhouse snitch, as you've labeled him, was pretty accurate.

A. On one of the things I would agree you're correct.

Q. But you would agree at that point, and that being the true proof at trial, that he was capable of premeditating an act of harm against Billie Jean -- Billie. Is that correct?

A. Hold on. Could you --

Q. At the point he said I'm going -- he determined to go out and either reconcile or make her feel as helpless as he felt, he was capable of premeditation, was he not?

A. Well, I think the question is premeditation of what?

Q. No, sir. Was he capable of

premeditated action?

MR. ELLIS: I'm going to object, Your Honor. He's trying to answer the question and he's cutting him off.

THE COURT: Overruled. Go ahead and answer if you can, then he can explain.

A. I think at that point he may have been capable of preplanning. I think at that point he probably was already feeling somewhat emotional, but if the question is would he have been entirely unable to preplan anything or premeditate anything, I don't know that at that point he was so upset that he would be unable to premeditate; however, again, it comes down to the question of make her feel as helpless as he felt. That's kind of a -- an open ended statement and I don't know exactly how to interpret that.

Q. He was capable of conceiving a plan, was he not?

A. To some degree.

Q. And he was capable of acting on that plan, was he not?
A. At that point in time.
Q. Now, he drove out to the house and he disconnected the phone lines.
A. Yes.
Q. What was the purpose of that?
A. Well, I think we have divergent accounts of that. His account --
Q. What was Jon's account?
A. His account was he disconnected the phone line. He claimed he knew he was breaking the Restraining Order. He believes an argument was eminent and did not want the police to be called.
Q. At that point he appreciated the wrongfulness of his conduct, didn't he?
A. In breaking the Restraining Order, yes.
Q. Well --
A. But that doesn't necessarily indicate that at that point he was preplanning murdering her.
Q. Well, it shows he's capable of

preplanning, doesn't it?
A. Of some degree of preplanning, yes.
Q. And he was capable of acting upon those plans, wasn't he?
A. At that moment in time in terms of disconnecting the phone lines, yes, although there are divergent accounts of what his motivation for doing that was.
Q. Now, the proof at trial is also that he forced his way into the house.
A. Well, I believe there was some testimony on that, but I think again -- as I understood it, Stephanie Lambert said he pushed his way in the door. As I understood it, Cynthia Lambert said he pushed his way in and then when she was asked specifically on cross whether or not she saw that, she said she didn't remember him pushing his way in.
Q. Now --
A. And I don't know that I saw testimony from Jennifer Lambert on that issue.

Q. Assuming that's the testimony, why would he push himself in the house?
A. Well, that's the testimony. The question is did he push his way in the house? I think the other thing that needs to be considered again, and looking at this video, one of the things that I wanted to ascertain was were there inconsistencies and discrepancies in what the girls had reported, and I was expecting to see -- if their version was 100 percent accurate, I was expecting to see a sewing machine and some other items in front of the door that had been barricading the door. I didn't see that. The sewing machine appeared to be on the other side of the room. It didn't appear to be disturbed. I don't -- you know, I guess the police could have come around and neatened up, but I don't suspect that's what happened. So, you know, again, I think that there are -- you know, this is a highly emotional situation for child

witnesses, and I think their testimony -- you know, when they -- when they witness something horrible I think, you know, there is a difficulty -- these girls are at risk for post-traumatic stress disorder. One of the things about post-traumatic stress disorder is that there may be, if you look closely at the criteria, there may be some psychogenic amnesia for some of the things that occurred. So, I believe, you know, there's some testimony that they have, but, again I think that -- I -- you know, as far as I can see, you know, with some discre -- there are some discrepancies. What weight should be given to the testimony of each is not -- you know, I can't say, but I -- you know, it's not a situation where I saw there were no discrepancies and, therefore, I had to say, well, look, you know, the only discrepancy here is what the defendant says and everyone else has this absolutely right.

Q. Now, testimony is also that he pushed her chair over, knocked her chair over.

A. I believe that was the testimony.

Q. All right. Why would he do that?

A. It could be because he was angry at that point. I'm not sure, you know, whether that certainly occurred, again.

Q. Dr. Auble testified he didn't get angry until he went in the back room. Do you disagree with that?

A. Well, I think -- he gave an account -- let me check. He did not give an account of pushing the chair over. So that's one issue, but to answer your question directly, I -- he described flying into a rage once he was back -- once he was in the back bedroom.

Q. So you have no way of accounting for the testimony or the fact that he pushed her chair over before he flew into a rage?

A. I realize that that's something that's been testified to. I -- you know, once again, it's not something -- and again, what I've said in -- said in my report is if you accept his version of the events, and it wasn't in his version of the events.

Q. When he was in the back room what caused him to fly into a rage?

A. I believe she had said to him, "What are you going to do? Beat me like the last time?" and he flew into a rage and shouted, "Beat you. I'll show you what a beating is."

Q. Now, that statement, "I will show you what a beating is," doesn't that tell you that he's thinking about what he's about to do?

A. Well, again, I think one of the points that I was making before was that he may recognize what he's doing. That's not an insanity defense. He recognizes the nature of his behavior. He may even -- he recognizes it's wrong,

but the capacity to stop himself and the capacity to control himself isn't there. I think people shout a lot of indiscreet things when they are very, very angry. So I don't see that as being inconsistent by virtue of he was able to state what he was doing that he had anymore control over what he was doing.

Q. What was his purpose in blocking the door if he was not able to control himself?

A. Okay. Well, it was my understanding that the assault began to occur close to the doorway. I think that's where the jewelry box was and it -- it wasn't like he was crossing the room in order to wedge his foot against the door from what I understand. It was just that he stepped -- he was beating her. I think she even yelled, "All right. That's enough." He replied, "I'll tell you when it's enough." Again, continued beating her. So, you know, again, the issue comes down to